

**Ramjan Vs Arvind Malik and Another****Criminal Revision No. 1693 of 2009 (O and M)**

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**Court:** High Court Of Punjab And Haryana At Chandigarh**Date of Decision:** July 29, 2013**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 378(3), 378(4), 401#Penal Code, 1860 (IPC) â€” Section 120B, 406, 409, 420, 467

**Hon'ble Judges:** Rekha Mittal, J**Bench:** Single Bench**Advocate:** Vandana Sharma, for Mr. Rajesh Lamba, for the Appellant;**Final Decision:** Dismissed

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**Judgement**

Rekha Mittal, J.

The present petition lays challenge to order dated 18.02.2009, passed by the Additional Sessions Judge, Gurgaon,

whereby revision petition filed by the respondents, has been allowed and the complaint filed by the petitioner under Sections 406, 409, 420, 467,

468, 471, 506 read with Section 120-B IPC and summoning order dated 08.08.2005, have been dismissed. The facts relevant for disposal of the

present petition are that, on 13.09.2000, Gram Panchayat Agon, Ferozepur Jhirka, auctioned 400 acres of land. The complainant (petitioner

herein) took the aforesaid land in an open auction for cutting the trees. He deposited Rs. 7,08,500/-, vide receipt Nos. 83 and 84 dated

13.09.2000 and 20.09.2000, respectively. Manohri-respondent No. 3 (accused No. 1 in the complaint) gave the possession of the land to the

petitioner. The petitioner later came to know that the land was around 190/200 acres in place of 400 acres and, accordingly, he moved application

on 27.12.2000 to the respondents. Later, a legal notice was sent through Shri Akhtar Hussain, Advocate, Ferozepur Jhirka. The petitioner was

called for hearing on 23.01.2001, at 11.00 am in the office of Block Development and Panchayat Officer, Ferozepur Jhirka. Sardar Mohammad,

accused No. 4 (since deceased) met the petitioner and advised him to come in the next week as the Block Development and Panchayat Officer

was not available. The petitioner again went to the office on 30.01.2001, all the accused were present and obtained thumb impressions on blank

paper, on the representation that the same were needed for getting him refund of the amount. On 17.04.2001, the petitioner came to know that an

amount of Rs. 1,62,000/- had been withdrawn by the accused. The petitioner along with his brother Idrish and Ismile met Sardar Mohammad and

he started abusing the petitioner.

2. After recording preliminary evidence consisting of statements of Idrish (PW 1), Ramjan (PW 2) and Ismile (PW 3) and documents, the Sub

Divisional Judicial Magistrate, Ferozepur Jhirka passed an order summoning respondents and Sardar Mohammad (since deceased) to face trial for

offence u/s 420/120-B IPC.

3. Feeling aggrieved against order dated 08.08.2005, passed by the Sub Divisional Judicial Magistrate, the respondents/accused filed revision

petition, which was allowed, vide impugned order dated 18.02.2009, passed by the Additional Sessions Judge, Gurgaon.

4. Counsel for the petitioner submits that at the stage of summoning the accused for facing criminal proceedings, the Court is not required to

scrutinise the evidence minutely and meticulously to find out whether material on record is sufficient to warrant conviction of the accused. It is

further submitted that if on reading of allegations contained in the complaint and evidence led during enquiry, a prima facie case is made out; the

Magistrate is bound to summon the accused to face trial. It is further argued that keeping in view averments of the complaint and the evidence led

on record, the learned trial Court rightly recorded a finding that there are sufficient grounds to summon all the accused for commission of offence

punishable u/s 420 read with Section 120-B IPC, but the Court of Additional Sessions Judge, has exceeded its jurisdiction in exercise of revisional

power to set aside a legal and valid order passed by the learned Magistrate. It is prayed that the order passed by the revisional Court may be set

aside and the accused should be directed to face trial.

5. I have heard counsel for the petitioner and perused the case file.

6. A perusal of the impugned order passed by the Court of Additional Sessions Judge would reveal that the reasons which weighed in the mind of

the Court to set aside the summoning order passed by the trial Court are recorded in paras" 11 to 14 of the said order. One of the observations

made by the Court says that in an inquiry conducted by the Sub Divisional Officer (Civil) Ferozepur Jhirka vide his report dated 15.10.2001

submitted to the Deputy Commissioner, Gurgaon, it was mentioned that the respondent (petitioner herein) had received the entire amount through

various cheques, details of which were given in the report itself. Counsel for the petitioner, despite specific query raised by this Court, fails to give

any satisfactory reply that if the payment was made to the petitioner through cheques, how his plea that his signatures were obtained on a blank

receipt, can hold ground that a prima facie case for committing fraud by the respondents, is made out. It is none of the plea of the petitioner that

though the cheques were issued in his name but the money was withdrawn by the respondents. Another fact which needs consideration is that as

per allegations of the complainant, thumb impressions of the petitioner on a blank paper were obtained by Sardar Mohammad, who has since

passed away, which fact has been taken into consideration by the revisional Court. Counsel for the petitioner has failed to point out any error much

less infirmity, illegality and perversity in the impugned order as would call for interference by this Court.

7. This apart, the petitioner has filed revision petition u/s 401 of the Code. The petitioner is the complainant in a complaint case, who is also a

victim. The complaint filed by him has been dismissed by the Additional Sessions Judge, Gurgaon while accepting the revision petition preferred by

the respondents. The order of dismissal of complaint amounts to acquittal of the respondents. As the complaint has been dismissed resulting in

acquittal of the respondents, the petitioner shall have remedy of appeal against acquittal u/s 378(4) of the Code and he was required to seek leave

to appeal from this Court in the manner contemplated u/s 378(3) and (4) of the Code. In this regard, I find fortification to my view from a recent

judgment of this Court in M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. and Others, . The revision petition preferred by the petitioner is

not maintainable in the eye of law. In view of what has been discussed hereinabove, the petition is dismissed.